
Temporary Assistance for Needy Families Program Instruction

U.S. Department of Health and Human Services
Administration for Children and Families
Office of Family Assistance
Washington, DC 20447

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TO: State agencies administering the Temporary Assistance for Needy Families (TANF) program and other interested parties.

SUBJECT: Funding Childhood Education, School Readiness, Kindergarten and Other Public Education Programs

REFERENCES: Section 409(a)(7) of the Social Security Act, 45 CFR 263.11(b), 45 CFR Part 92, and OMB Circular A-87

PURPOSE: This Program Instruction provides guidance about when and how Federal TANF and State Maintenance of Effort (MOE) funds may be used for early childhood education, school readiness, kindergarten and other public education programs.

BACKGROUND: Many States have designed and are providing early childhood education, school readiness and child care services to young children. In light of President Bush's "Leave No Child Behind" education goals, recent brain development research, and State fiscal constraints, Governors, State legislators and other policy-makers have asked under what circumstances it is appropriate to use Federal TANF and/or State maintenance-of-effort (MOE) expenditures to pay for these pre-kindergarten (or other school readiness programs), kindergarten and other public education expenditures.

POLICY:

TANF General Funding Principles

The TANF program provides remarkable flexibility to fund a wide variety of activities, services and benefits. States may use both Federal TANF and State MOE funds in "any manner that is reasonably calculated" to accomplish one or more of the TANF purposes:

1. To provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
2. To end the dependence of needy parents on government benefits by promoting job preparation, work and marriage;
3. To prevent and reduce out-of-wedlock pregnancies; and
4. To encourage the formation and maintenance of two-parent families.

Our funding guide *Helping Families Achieve Self-Sufficiency* provides additional guidance: "Activities, benefits, or services that are reasonably calculated to

accomplish a TANF purpose are those that directly lead to (or can be expected to lead to) achievement of a TANF purpose. ... This includes activities whose relationship to a purpose may not be obvious, but for which there is evidence that it achieves a purpose.”

States have broad discretion to decide what services and benefits to offer and to set different eligibility standards for various types of benefits. States also fund their TANF programs with a combination of Federal and State funds. While both are very flexible, the two sources of funds have somewhat different rules and restrictions. Under TANF purposes 3 and 4, States may use segregated Federal TANF funds (but not MOE funds) to help clients who are not financially needy with different benefits and services, as long as the activity does not constitute “assistance” as defined in 45 CFR 260.31(a).

But, clients must be financially needy to receive (a) any federally funded assistance, regardless of TANF purpose; (b) Federally funded benefits or services under purposes 1 or 2; and (c) any MOE-funded benefits, services, or assistance.

Federally funded assistance and any MOE-funded benefits, services or assistance may only be provided to a financially needy family that consists of, at a minimum, a child living with a relative, or consists of a pregnant woman. The family must meet the quantified income and applicable resource criteria established by the State for that particular benefit. If Federal funds are used to provide “assistance,” recipients are subject to work participation requirements, a 5-year time limit, data reporting and certain prohibitions; but these restrictions do not generally apply to recipients of services, such as education and training.

We have previously clarified that expenditures for various pre-kindergarten, kindergarten, and other educational activities for children are reasonably calculated to accomplish TANF purpose 1. Therefore, such program expenditures would be allowable, unless they fall under the prohibition in OMB Circular A-87 as a general cost of State government.

Cost Principles Applicable to Federal TANF Funds

OMB Circular A-87 and 45 CFR Part 92 outline the cost principles for State and local governments that apply to TANF grants. To be allowable, costs must be necessary and reasonable for the proper and efficient administration of the grant program, be allocable to Federal awards, be authorized or not prohibited under State or local laws, and conform to any limitations or exclusions set forth in these principles, Federal laws, or governing regulations.

OMB Circular A-87 prohibits the use of program funds for “the general expenses required to carry out the responsibilities of a State.” Such “general government expenses” include “...services normally provided to the general public, such as fire and police, unless provided for as a direct cost in program regulations.” The Circular precludes payment of an otherwise allowable cost, if such costs would be

incurred by the State in the absence of a Federal program. The Departmental Appeals Board (DAB) provides additional insight by re-stating the principle in different terms: “A useful touchstone in analyzing whether a cost is unallowable as a general governmental expense is to consider whether it is incurred to meet ‘underlying obligations that would continue to exist absent any Federal program requirement.’” *Kentucky Cabinet for Human Resources*, DAB No. 931 (1988). This policy avoids the subsidization of State obligations with Federal dollars when a program coincidentally overlaps a specific Federal program.

Under this prohibition, water, power, roads, and transportation services and institutions like public schools and prisons have long been considered a general cost of State government. The public education prohibition has been characterized as prohibiting the use of Federal funds for kindergarten through the 12th grade (K-12). But, the recent development in several States of universal and free pre-kindergarten, school readiness or early childhood education programs as underlying obligations or entitlements expands these “general costs of State government”.

If a State’s public education system includes free pre-school, pre-kindergarten, or early childhood education programs to all appropriately aged children, then it meets the definition of a “general State expense.” If the program meets the condition of such an underlying State responsibility, that status is unaffected by the method of service delivery. Whether the State provides these school readiness programs directly through public schools or they are offered through a variety of diverse, non-profit, for-profit, or faith-based facilities, such costs are still a “general State expense.”

Because public education is a State responsibility, States may not use Federal TANF for any educational activity that is a component of the State’s system of free public schools. By charging the Federal government for any part of these costs, the State would be passing on to the TANF program the costs of the State’s public education system--just the approach OMB Circular A-87 prohibits.

This prohibition applies regardless of the adequacy of funding for general public education from other sources. The prohibition also applies whether school attendance is voluntary or compulsory. Included in the prohibition would also be programs like “Charter Schools” that operate under a contract between a public agency and groups of parents, teachers, community leaders, or others who want to create alternatives and choice within the public school system.

If, under State law, the educational activity is not part of the free public education system, then Federal TANF funds may be used for pre-school, school readiness or early childhood education programs. States may use Federal TANF funds to pay for pre-kindergarten, kindergarten, or other educational costs under purpose 3 or purpose 4, if these activities are not part of a State’s general free education system. However, we recommend limiting the use of program funds in this way to low-income, at-risk children. Over the past several decades, a fairly extensive

body of research has demonstrated the positive effects of quality early childhood programs for disadvantaged children's school success, as well as their health, cognitive, social and emotional development. Some additional long-term outcomes for disadvantaged children (reported primarily from one study) include less contact with the criminal justice system, higher earnings as adults, less reliance on social services as adults, and fewer out-of-wedlock births.

The "general cost of State government" prohibition does not apply to child care. OMB Circular A-87, Attachment B, item 23 (General government expenses) prohibits the use of program funds to pay for "other types of government services normally provided to the general public, such as fire and police, **unless provided for as a direct cost in program regulations.**" Because child care is explicitly authorized in both the TANF statute and regulations, child care costs are not subject to the limitation.

State MOE Funds

States must spend 80% of their 1994 level of spending (or 75% if they meet work participation requirements) on "qualified State expenditures." All MOE funds must be spent on TANF "eligible families." One of the qualified activities for which funds may be claimed includes "educational activities to increase self-sufficiency, job training and work." However, section 409(a)(7)(B)(i)(I)(cc) of the Social Security Act explicitly excludes "any expenditure for public education in the State except expenditures which involve the provision of services or assistance to a member of an eligible family which is not generally available to persons who are not members of an eligible family." The foregoing statutory language prohibits any and all public education expenditures not meeting the exception, including any pre-kindergarten or early childhood education services included as a component of a State's public education system.

The statutory exception does not define the term -- "*generally available*" to clarify when the exception is met. The only clarification to this term appears in the preamble to the implementing regulations at 45 CFR 263.4: "We believe Congress intended to prohibit States from substituting program funds for existing expenditures from general funds on the traditional, free public education system. Thus, general fund expenditures for traditional, free public education do not count toward the State's basic MOE requirement." (64 FR p. 17834) Accordingly, the regulations at 45 CFR 263.4 state that if educational activities or services are generally available to other residents of the State without cost and without regard to income, then the educational expenditures for or on behalf of eligible families may not count for MOE purposes.

Several States have indirectly inquired as to when free public education is not "generally available." We believe a quantified benchmark is one method of establishing whether a State may claim public education costs for or on behalf of eligible family members toward its MOE requirement. For example, if a particular public education activity is available to more than 50 percent of the appropriate age group throughout the State for that grade, or course, then it would be

reasonable to consider that grade, or course to be “generally available” to everyone without regard to cost and without regard to their income. In determining the appropriate age group(s), States must follow the State law or other official State policy.

Here’s an illustration of how a State may apply such a quantified benchmark. Per State law, public school half-day kindergarten is available to every 5 and 6 year old child in the State. Therefore, none of these expenditures may count toward the State’s MOE requirement, as it is available free to State residents. However, the State also offers an additional half-day of public school kindergarten in certain areas of the State. These areas account for 40% of the 5 and 6 year old children in the State. Because full-day public school kindergarten is only available to 40% of the appropriately aged children in the State, it is not considered “generally available” to State residents without cost and without regard to their income. Therefore, the State may claim the allocable share of expenditures for the extra-half day of kindergarten provided to or on behalf of children in eligible families residing in the State.

Like Federal TANF funds, qualified state expenditures on child care assistance under Section 409(a)(7)(B)(i)(I)(bb) of the Social Security Act may be claimed, because they are not subject to the limitation for “educational activities.” A State may use Federal TANF funds and/or claim State expenditures for MOE for the costs of wrap-around services that complement excluded education programs and extend child care services for the full day. These services may be made available for low-income children as long as they are not part of the system of free public schools.

Section 409(a)(7)(B)(iv) of the Social Security Act and the implementing regulations at 45 CFR 263.3 provide one very limited opportunity for States to count educational expenditures as child care. States may count a fixed amount of child care expenditures made under the Child Care Development (CCDF) Matching Fund program toward their TANF MOE requirement. The fixed amount equals the State’s CCDF Matching Fund MOE amount. For example, if a State’s annual CCDF Matching Fund MOE requirement is \$5 million, then the State may count up to \$5 million in expenditures for or on behalf of eligible family members toward its TANF MOE requirement. The \$5 million may come from expenditures used to meet the State’s CCDF Matching Fund MOE requirement or expenditures made to receive CCDF Federal Matching funds.

Within the limits provided in the CCDF regulations at 45 CFR 98.53(h), States may use expenditures for non-compulsory public pre-kindergarten services toward meeting the CCDF Matching Fund MOE requirement or to receive CCDF Federal Matching Funds. Accordingly, the State may also count such expenditures for or on behalf of eligible family members toward its TANF MOE requirement.

EFFECTIVE DATE: With one exception, the principles in this program instruction are effective immediately.

If States have taken action to fund programs based on specific policy advice from us that is changed by this policy, they will have the opportunity to make necessary legislative or policy changes before the clarification is effective. New Jersey and New Mexico have been advised that Federal TANF or MOE funds might be used in ways that do not conform to this policy instruction. To give these States the time and opportunity to make necessary legislative changes, modify their procedures and implement this policy, these two States may continue their practice through the current school year.

If other States are similarly situated -- already using TANF or MOE dollars for the unallowable educational expenditures outlined above -- please notify your appropriate Regional Office within 30 days. We will determine whether you might also qualify for a deferral of this policy until school year 2005-2006.

INQUIRIES: Inquiries and comments should be directed to the appropriate Administration for Children and Families (ACF) Regional Administrator.

/s/

Andrew Bush
Director
Office of Family Assistance